



# The Florida Senate

*Interim Project Report 2000-12*

*September 1999*

Committee on Budget

Senator Locke Burt, Chairman

## CHILD LABOR LAW ENFORCEMENT

### SUMMARY

The Child Labor Compliance Section within the Department of Labor and Employment Security (DLES) is responsible for enforcing the provisions of state and federal law which govern the employment practices related to minors. The Child Labor Program has two primary goals: (1) protect the health and education of working youth and (2) educate the employers, public school employees, and the general public about the Child Labor Law. There are approximately 360,000 minors employed in this state between the ages of 16-17. Data for 14-15 year olds is not available.

In the 1999 legislative session, questions surfaced concerning the function and operation of the program, why a deficit existed in the trust fund, and the overall performance of this program. The purpose of this report is to examine the current operations and resources of this program, examine the operations and resources of other states' Child Labor Enforcement programs, and provide the Legislature a foundation to assess the effectiveness of the program.

Due to limited resources: three farm labor investigators assist with child labor investigations, there is a backlog of follow-up investigations and there are no on-site inspections made on the entertainment industry.

It appears that there has only been one recent review of this program. In July 1995 a management assessment was conducted in response to an alleged discrimination complaint.

Research for this project has shown that Child Labor programs are administered by other states in a variety of ways. Several states mirror Florida by using a similar "complaint driven" method.

Based on the findings in this report, the following is recommended:

1. The funding for child labor compliance and farm labor compliance should be separated.

2. The Child Labor Law Trust Fund should be utilized to carry out the responsibilities for the Child Labor Law and not the Crew Chief Registration Trust Fund.

3. The funds appropriated by the 1999 Legislature should be used according to legislative intent. These funds were to provide for two additional child labor investigators, travel and the leasing of two vehicles for new positions.

4. The Legislature should consider having OPPAGA conduct a more in-depth program review. This review should include the operational structure and funding for child labor and farm labor programs.

### BACKGROUND

#### Child Labor Law

Chapter 450, Part I of the Florida Statutes (Child Labor Law), 38H-14, Florida Administrative Code and certain provisions of the Federal Fair Labor Standards Act govern the employment practices related to minors. The Child Labor Compliance Section within the Department of Labor and Employment Security is responsible for enforcing these provisions. DLES did not receive dedicated resources to implement this program until 1991. Prior to 1991, DLES referred cases to local state attorney offices for criminal prosecution. In Florida, because there are state and federal child labor provisions, the law setting the higher standards must be observed.

The Child Labor Program has two primary goals:

(1) protect the health and education of working youth and (2) educate the employers, public school employees, and the general public about the Child Labor Law. There are approximately 360,000 minors employed in this state between the ages of 16-17. Data for 14-15 year olds is not available.

The Child Labor Compliance Section has two Memorandums of Understanding (MOU) with other agencies to assist with the enforcement of the child labor laws. The agreements are with the Florida Department of Education (DOE) and the United States Department of Labor (USDOL), Wage and Hour Division. The MOU with DOE allows them to issue employment waivers when a working youth is enrolled in Florida's public schools. The MOU with the USDOL allows for the exchange of information during a child labor investigation.

### **Working Minors**

In Florida, any person under the age of 18 is considered a minor. In order to be exempt from classification as a minor, youth must provide one of the following to their employers:

- C A certificate of marriage, marital separation, or divorce
- C A copy of a court order that exempts them from the provisions of the Florida Child Labor Law
- C A copy of current military orders or proof of discharge or separation from the military
- C A copy of a high school diploma, GED, or an official letter from the minor's school certifying graduation

Youth must be 14 years of age to work. A 14-year-old can work in any occupation that is not declared hazardous.

### **Exemptions from Minimum Age Requirement**

Section 450.21, F.S., allows for several exemptions to the minimum age requirement for working minors. Children that are 11 years of age or older may sell or deliver newspapers. Minors of any age can be employed as outlined below:

- C Serve as a Page in the Florida Legislature
- C Work in the entertainment industry as long as the entertainment industry employer or agent do not permit them to work in an environment that is hazardous or detrimental to their health, morals, or education
- C Work for their parents or guardians
- C Work on a farm or perform domestic work

### **Hours of Employment**

Children less than 16 are not permitted to work more than three hours a day when school is scheduled the next day. If school is not scheduled the next day, they can work up to eight hours a day. While school is in session, they cannot work more than fifteen hours a week and they are not allowed to work before 7:00 a.m. or after 7:00 p.m.. During holidays and summer vacations, they can work up to eight hours a day, but no more than 40 hours a week or later than 9:00 p.m.

Sixteen and seventeen year olds are not permitted to work more than eight hours a day and no more than 30 hours a week during the regular school year. They are not permitted to work before 6:30 a.m. or after 11:00 p.m. while school is in session. During the holidays and summer vacation, there are no restrictions on the number of hours that they may work during a day or week.

Minors are not allowed to work more than six consecutive days in any seven-day period. They must be given a 30 minute uninterrupted break when they work more than four consecutive hours.

### **Exemptions from Hour Restrictions**

There are several exemptions to the restrictions on the number of hours that minors work. Those exemptions include:

- C Obtaining a waiver from the school superintendent or designee or by calling or writing the Child Labor Section and requesting Form CLL-104
- C Enrolling in a vocational education or work experience program approved by the state or a federal agency
- C Performing domestic work in private homes
- C Working for parents or guardians
- C Serving as a Page in the Legislature

### **Fair Labor Standards Act (Federal Law)**

There are provisions within the Fair Labor Standards Act (FSLA) that govern employment practices for children. FSLA is a federal law and is enforced by the United States Department of Labor, Wage and Hour Division. Not all businesses are governed by FSLA. Most businesses are covered by this Act if they have annual sales in excess of \$500,000. The following are covered by the Act regardless of the volume of business: hospitals; residential institutions that provide care for the

sick, aged, mentally ill or disabled; schools for children who are mentally or physically disabled or gifted; schools (prekindergarten through higher education); and federal, state and local governments. There are approximately 77 employees with the Wage and Hour Division assigned to handle the provisions of FSLA in Florida. They estimate that 2-5% of their workload involves child labor enforcement. The other duties are directed to the enforcement of wage and hour claims, farm labor, the Family Medical Leave Act, and whistleblower investigations.

### **Working Minors**

Under FSLA, the minimum age for most non-agriculture work is 16, however 14 and 15 year olds may be employed outside of school hours for certain occupations under certain conditions. The following types of employment are permissible at any age: delivery of newspapers; entertainment (radio, television, movies, or theatrical work); and family owned non-farm businesses (except in mining, manufacturing, or in any other occupation declared hazardous by the Secretary of Labor).

Fourteen and fifteen year olds are permitted to work in various non-manufacturing, non-mining, nonhazardous jobs for no more than three hours on a school day, and 18 hours in a school week. If school is not in session, they are permitted to work eight hours a day or 40 hours a week. They may not begin work before 7:00 a.m. or work beyond 7:00 p.m., except from June 1 through Labor Day. From June 1 through Labor Day, they are permitted to work until 9:00 p.m. If they are enrolled in an approved Work Experience and Career Exploration Program, they may be employed three hours a day and for up to 23 hours a week while school is in session (this includes working during school hours). Sixteen and seventeen year olds may perform any job not declared hazardous by the USDOL Secretary for unlimited hours.

### **Hazardous Occupations**

Both the Child Labor Law and FSLA contain provisions that prohibit the employment of minors in certain hazardous occupations. Some of the most common hazardous occupations for minors are: manufacturing or storing explosives, logging or saw milling, and operating power driven machinery for baking and meat packing.

### **Documentation Required from Minors**

Minors are required to provide proof of age to their employers. If they have been issued a waiver authorization, they must provide a copy to their employer.

### **Duties of the Employers**

Employers are required to keep records of waiver authorizations, proof of age, and proof of exemption from minor status for employees under the age of 18. These records must be maintained as long as the minor is employed. If the business falls under the Fair Labor Standards Act, the record must be kept until the minor turns 19. They must also display a poster in a conspicuous place at the job site notifying minors of the Child Labor Law.

## **METHODOLOGY**

Staff conducted the following tasks to complete this project:

- C Met with staff from the Department of Labor and Employment Security. They provided information on budget and staffing, activity data, results from the telephone surveys from other states, and a copy of the Inspector General's report.
- C Reviewed the statutes, administrative rule and the Fair Labor Standards Act for information related to child labor enforcement.
- C Conducted telephone interviews with researchers from the University of South Florida and the University of Florida involved with studies on agricultural safety for children and seasonal and migrant workers.
- C Consulted with staff from Fiscal Policy.
- C Conducted telephone interviews with staff from Senate Commerce and OPPAGA.

## **FINDINGS**

### **Budget and Staffing**

The Child Labor Program has ten full-time equivalent positions. This includes seven child labor investigators, two support staff and one coordinator. Due to limited resources, three farm labor compliance officers assist with child labor investigations. The estimated budget for FY 99-00 is \$1.3 million from general revenue and the Crew Chief Registration Trust Fund. The \$1.3 million supports the child labor and farm labor programs since they are interrelated.

Fiscal Year	Total Budget ( in millions)
99-00	\$1.3
98-99	1.4
97-98	1.4
96-97	1.2

The 1999 Legislature appropriated \$107,983 in general revenue for the child labor program to provide two additional child labor investigators, expenses for travel and the lease of two vehicles for the new positions. However, because there is a deficit in the Crew Chief Registration Trust Fund, the additional funding is being used to help cover the shortfall in the trust fund.

The receipts for the Crew Chief Registration Trust Fund are registration and testing fees collected from farm labor contractors. The amount collected from registration and testing fees averages \$25,000 monthly. DLES staff indicated that the registration and testing fees have never been sufficient to totally support the farm labor program. Any fines collected from the farm labor contractors by law are required by law to be deposited into general revenue unallocated. Last year, \$75,000 in fines were collected from farm labor contractors.

There is a Child Labor Law Trust Fund established in section 450.155, F.S., for any appropriations made by the Legislature and fines. However, this trust fund has not been used to provide operating funds for the child labor program. DLES staff indicated that the only receipts going into this trust fund currently are the fines. The balance in this trust fund is approximately \$117,000.

### **Training and Staff Development**

When a child Labor investigator is hired, they normally spend about two weeks becoming familiar with the job responsibilities, the state and federal laws, and administrative rules. They spend the next six weeks with a designated lead worker in the field.

The experienced investigators receive training on interpreting the laws, investigative and interviewing techniques.

### **Child Labor Regions**

The state is divided into nine geographical areas consisting of multiple counties. These service areas were established based on population, the number of employers, proximity of Labor's regional offices, and travel time.

#### **Child Labor Regions**

Region I	Escambia, Santa Rosa, Okaloosa, Walton, Holmes, Washington, Bay, Jackson, Calhoun, Gulf, Liberty, Gadsden, Franklin, Wakulla, Leon, Jefferson, Taylor, Madison
Region II	Hamilton, Suwannee, Lafayette, Dixie, Gilchrist, Levy, Columbia, Baker, Alachua, Union, Bradford, Marion
Region III	Nassau, Duval, Clay, St. Johns, Putnam, Flagler
Region IV	Citrus, Hernando, Pasco, Sumter, Lake, Polk, Hardee, Highlands, Orange
Region V	Volusia, Seminole, Brevard, Osceola, Indian River, Martin, Okeechobee, St. Lucie
Region VI	Hillsborough and Pinellas
Region VII	Palm Beach and Broward
Region VIII	Manatee, Sarasota, DeSoto, Charlotte, Glades, Lee, Henry, Collier
Region IX	Dade and Monroe

### **Investigations**

The investigations for nonagricultural businesses are complaint driven. For agricultural businesses, the farm labor compliance officers check for child labor violations as they perform the regular on-site inspections of farm labor contractors. There are approximately 4,700 farm labor contractors. These contractors hire migrant and seasonal workers.

Initial complaints (nonagricultural) are investigated immediately. However, due to the limited resources, there is currently a backlog of follow-up investigations.

Activity	7/98-6/99	7/97-6/98	7/96-6/97
Initial Investigations	453	392	419
Follow-up Investigations	398	134	44

From July 1998 through May 1999, the farm labor compliance officers conducted 3,081 field inspections through routine canvassing. There were 29 citations involving 68 minors. During this same period, there were 145 periodic weekend field inspections in areas that have a large number of farm workers employed. This resulted in four citations. Agricultural seminars and workshops were conducted for more than 250 growers, farm labor contractors, and other agency representatives.

### **Violations and Fines**

When a complaint is received, a Notice of Investigation (NOI) is immediately sent to the employer. The NOI lets the employer know that there will be an on-site investigation and requests that all employment information be made available. The on-site investigation is scheduled within 2-3 weeks after the receipt of the NOI. If a violation(s) is found during the on-site investigation, a Summary of Violation Notice is given to the employer. Once the investigator returns to the office, a Notice of Warning is sent by certified mail. This warning cites the violation(s) and establishes a specified period for corrective action. A follow-up investigation is done in six months and if the violation is not corrected, a fine may be assessed not to exceed \$2,500 per offense. Violation of the Child Labor Law is a second degree misdemeanor. If a complaint alleges the presence of hazardous or dangerous conditions, an investigator

responds immediately by issuing a "cease and desist" order.

From FY 95-96 through FY 97-98, \$138,538 in civil money penalties have been assessed and \$87,067 has been collected.

### **Permit to Hire Process - Entertainment Industry**

The entertainment industry employer is exempt from many of the employment restrictions for minors outlined in Chapter 450, Florida Statutes. Therefore, they are required to submit an application to obtain a Permit to Hire prior to employing any minor. A Permit to Hire request is considered a priority and is usually evaluated and processed immediately.

At the conclusion of employment, the employer is required to submit an after-the-shoot report. This report shows the dates that the minor worked, the location of the work, and the date the work ended. There is currently no "formal" process in place to ensure that these reports are filed timely and there are no on-site checks of the entertainment industry practices. The Child Labor Compliance Section has indicated that follow up on the after-the-shoot reports has not been given full priority since they have not received complaints or any reports of abuse against the entertainment industry. For fiscal years 1998-99, 1997-98, and 1996-97 the number of entertainment industry permits issued were 75, 105, and 119 respectively.

The Office of the Inspector General (DLES) performed a management assessment of the Child Labor Program in 1995. They recommended that the current requirements of the Permit-to Hire process be eliminated or streamlined due to the limited resources and the lack of demonstrated child labor problems in the entertainment industry.

### **Waivers**

Section 490.095, Florida Statutes provides for the issuance of waivers to working minors on a case-by-case basis when they can demonstrate that they need exemptions from certain provisions of the Child Labor Law. These partial waivers are issued for financial or medical hardship (for the minor or the minor's family), school status, or court order. The local school superintendent or his or her designee may issue partial waivers to minors attending public school. The Child Labor Compliance Section handles all other requests for

partial waivers. There are times when requests for waivers are denied. Waivers are denied the majority of the time because the documentation provided was inadequate. Other reasons for denying the issuance of waivers are because the request was made to work in a hazardous occupation or the request was made to work than 40 hours per week.

Activity	7/98-6/99	7/97-6/98	7/96-6/97
Partial Waivers Requested	1,342	1,133	915
Partial Waivers Issued	809	491	539

### **School-to-Work**

In 1995, the Child Labor Compliance Section began working closely with the Department of Education on the School-to-Work program. As an active partner in this program, the child labor office conducts educational seminars for teachers, employers, parents, and minors on the requirements of the child labor law. This partnership is a proactive approach to ensure compliance with the law. In FY 98-99, 45 educational workshops were conducted.

### **A Survey of Other States**

The Child Labor Compliance Section conducted an informal telephone survey in July 1999. Sixteen states were contacted and eight states responded. All of the states are located in the USDOL's Atlanta Region (Region 4) with the exception of New York, California, Pennsylvania and Texas. New York, California and Texas were surveyed because they are more comparable to Florida in size and population. Pennsylvania was contacted because like Florida, they handle the farm labor contractor enforcement. All of the states responding to the survey indicated that they have a state Child Labor Enforcement Program with the exception of North Carolina. North Carolina refers all complaints to the United States Department of Labor. All of the respondents indicated that the inspections are "complaint driven" except Texas. Texas stated that they use a proactive system of dealing with child labor issues by using the majority of their resources conducting workshops and educational

training. Texas occasionally does "sweeps" and unscheduled investigations. All of the states receive 100% state funding for their programs. In addition to handling child labor enforcement, five states also issue work permits and perform wage and hour investigations.

### **Accidents**

A report from the Division of Workers indicates that from January 1988 to April 1999, there were 5,742 accidents for minors under the age 18. The majority of the accidents (3,350) were in the retail industry. The retail industry includes food chains and restaurants.

### **Program Reviews**

OPPAGA indicated that they have not reviewed this program. There also have not been any statutory changes since 1996.

It appears that there has only been one recent review of this program. In July 1995 a management assessment was conducted by the Office of the Inspector General (DLES) in response to an alleged discrimination complaint.

## **RECOMMENDATIONS**

1. The funding for child labor compliance and farm labor compliance should be separated.
2. The Child Labor Law Trust Fund should be utilized to carry out the responsibilities for the Child Labor Law and not the Crew Chief Registration Trust Fund.
3. The funds appropriated by the 1999 Legislature should be used according to legislative intent. These funds were to provide for two additional child labor investigators, travel and the leasing of two vehicles for new positions.
4. The Legislature should consider having OPPAGA conduct a more in-depth program review. This review should include the operational structure and funding for child labor and farm labor programs.

**COMMITTEE(S) INVOLVED IN REPORT** (*Contact first committee for more information.*)

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Committee on Fiscal Policy

Committee on Commerce and Economic Opportunities

**MEMBER OVERSIGHT**

Senators James Hargrett and Daniel Webster